

DONALD GOWER §  
v. § CIVIL ACTION NO. 9:12cv16  
TDCJ, ET AL. §

The Plaintiff Donald Gower, an inmate of the Texas Department of Criminal Justice, Correctional Institutions Division, filed this civil rights lawsuit under 42 U.S.C. §1983 complaining of alleged violations of his constitutional rights. This Court ordered that the case be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

On January 27, 2012, the Magistrate Judge ordered Gower to pay an initial partial filing fee of \$10.67, pursuant to 28 U.S.C. §1915(b). Gower did not comply with this order or respond to it in any way. The Magistrate Judge thereupon issued a Report recommending that the lawsuit be dismissed without prejudice, with the statute of limitations suspended for a period of 60 days following the date of entry of final judgment in the case. *See Mills v. Criminal District Court No. 3*, 837 F.2d 677 (5th Cir. 1988); *Rodriguez v. Holmes*, 963 F.2d 799 (5th Cir. 1992).

In response, Gower filed a “notice to the court,” which is properly construed as objections to the Report. In his objections, Gower says that he responded to the order for the initial partial filing fee by asking that the fee be waived until such time as he was not indigent; however, the Report said that he did not respond to the order. He again asks that the fee be waived until he is not indigent.

A review of the docket confirms that no response was received from Gower to the order for the initial partial filing fee. More pertinently, however, Gower's application for leave to proceed *in forma pauperis* and certified TDCJ data sheet do not show that he is indigent. His data sheet reflects a balance of \$53.37 and shows a total hold amount of zero, and the date of indigency is listed as "00/00/0000." Gower's application for leave to proceed *in forma pauperis* states that over the past 12 months, he received \$170.00 from his family. He makes no showing that he was unable to pay an initial partial filing fee of \$10.67. Gower's objections are without merit.

The Court has conducted a careful *de novo* review of the pleadings in this cause, including the Report of the Magistrate Judge and the Plaintiff's objections thereto. Upon such *de novo* review, the Court has concluded that the Report of the Magistrate Judge is correct and that the Plaintiff's objections are without merit. It is accordingly

ORDERED that the Plaintiff's objections are overruled and the Report of the Magistrate Judge (docket no. 5) is hereby ADOPTED as the opinion of the District Court. It is further

ORDERED that the above-styled civil action be and hereby is DISMISSED without prejudice for failure to prosecute or to obey an order of the Court. It is further

ORDERED that the statute of limitations on the claims raised in this lawsuit is hereby SUSPENDED for a period of sixty days following the date of entry of final judgment in this case. The suspension of the statute of limitations will not affect any claims which were already barred by the operation of that statute at the time that this lawsuit was filed; such claims would remain barred regardless of any suspension of the limitations period. Finally, it is

ORDERED that any and all motions which may be pending in this action are hereby DENIED.

So **ORDERED** and **SIGNED** this **21** day of **August, 2012**.



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Ron Clark, United States District Judge